

NATIONAL MARINE SANCTUARIES PRESERVATION ACT

JULY 29, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 3487]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3487) to reauthorize the National Marine Sanctuaries Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Marine Sanctuaries Preservation Act”.

SEC. 2. AMENDMENT OF NATIONAL MARINE SANCTUARIES ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of National Marine Sanctuaries Act (16 U.S.C. 1431–1445a).

SEC. 3. REAUTHORIZATION OF THE NATIONAL MARINE SANCTUARIES ACT.

Section 313 (16 U.S.C. 1444) is amended to read as follows:

“SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Secretary to carry out this title—

“ (1) \$12,000,000 for fiscal year 1997;

“ (2) \$15,000,000 for fiscal year 1998; and

“ (3) \$18,000,000 for fiscal year 1999.”.

SEC. 4. MANAGEMENT, RECOVERY, AND PRESERVATION PLAN FOR U.S.S. MONITOR.

The Secretary of Commerce shall, within 12 months after the date of the enactment of this Act, prepare and submit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a long-range, comprehensive plan for the management, stabilization, preservation, and recovery of artifacts and materials of the United States Ship Mon-

itor. In preparing and implementing the plan, the Secretary shall to the extent feasible utilize the resources of other Federal and private entities with expertise and capabilities that are helpful.

SEC. 5. PUBLICATION OF NOTICE OF CERTAIN ADVISORY COUNCIL MEETINGS.

Section 315(e)(3) (16 U.S.C. 1445a(e)(3)) is amended by inserting before the period at the end the following: “, except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register”.

SEC. 6. ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES.

(a) INCORPORATION OF EXISTING PROVISION.—Section 316 (16 U.S.C. 1445 note) is redesignated as section 317, section 2204 of the National Marine Sanctuaries Program Amendments Act of 1992 (106 Stat. 5049) is moved so as to appear in the National Marine Sanctuaries Act following section 315, and that moved section is designated as section 316 of the National Marine Sanctuaries Act.

(b) AMENDMENT OF INCORPORATED SECTION.—Section 316, as moved and designated by subsection (a) of this section, is amended as follows:

- (1) Subsections (a), (g), and (h) are struck, and subsections (b), (c), (d), (e), and (f) are redesignated as subsections (a), (b), (c), (d), and (e), respectively.
- (2) In subsection (a), as so redesignated, the matter preceding paragraph (1) is struck and the following is inserted:
“(a) AUTHORITY.—The Secretary may establish a program consisting of—”.
- (3) In subsection (a)(5), as so redesignated—
 - (A) “establishment” is struck and “solicitation” is inserted; and
 - (B) “fees” is struck and “monetary or in-kind contributions” is inserted.
- (4) In subsection (a)(6), as so redesignated—
 - (A) “fees” is struck and “monetary or in-kind contributions” is inserted;
 - (B) “paragraph (5)” is struck and “paragraphs (5) and (6)” is inserted;
 - (C) “assessed” is struck and “collected” is inserted; and
 - (D) “in an interest-bearing revolving fund” is struck.
- (5) In subsection (a)(7), as so redesignated—
 - (A) “and use” is inserted after “expenditure”;
 - (B) “fees” is struck and “monetary and in-kind contributions” is inserted; and
 - (C) “and any interest in the fund established under paragraph (6)” is struck.
- (6) In subsection (a), as so redesignated, paragraphs (5), (6), and (7) are redesignated in order as paragraphs (6), (7), and (8), and the following new paragraph is inserted after paragraph (4):
“(5) the creation, marketing, and selling of products to promote the national marine sanctuary program, and entering into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary’s behalf.”.
- (7) The following new sentence is added at the end of subsection (a), as so redesignated:
“Monetary and in-kind contributions raised through the sale, marketing, or use of symbols and products related to an individual national marine sanctuary shall be used to support that sanctuary.”.
- (8) In subsection (e), as so redesignated—
 - (A) paragraph (2) is struck;
 - (B) in paragraph (1), “(1)” is struck, and subparagraphs (A), (B), (C), and (D) are redesignated as paragraphs (1), (2), (3), and (4); and
 - (C) in paragraph (3), as so redesignated, “fee” is struck and “monetary or in-kind contribution” is inserted.
- (9) In each of subsections (b), (c), and (d), as so redesignated, by striking “subsection (b)” and inserting “subsection (a)”.

SEC. 7. HAWAIIAN ISLANDS NATIONAL MARINE SANCTUARY.

Section 2305 of the Hawaiian Islands National Marine Sanctuary Act (16 U.S.C. 1433 note) is amended—

- (1) in subsection (a)—
 - (A) by striking “(A)” and inserting “(a)”; and
 - (B) by striking “the area described in subsection (b) is” and inserting “the area described in subsection (b)(1) and any area included under subsection (b)(2) are”;
- (2) by amending subsection (b)(2) to read as follows:
“(2)(A) Within 6 months after the date of receipt of a request in writing from the Kahoolawe Island Reserve Commission for inclusion within the Sanctuary of the area of the marine environment within 3 nautical miles of the mean high tide line

of Kahoolawe Island (in this section referred to as the ‘Kahoolawe Island waters’), the Secretary shall determine whether those waters may be suitable for inclusion in the Sanctuary.

“(B) If the Secretary determines under subparagraph (A) that the Kahoolawe Island waters may be suitable for inclusion within the Sanctuary—

“(i) the Secretary shall provide notice of that determination to the Governor of Hawaii; and

“(ii) the Secretary shall prepare a supplemental environmental impact statement, management plan, and implementing regulations for that inclusion in accordance with this Act, the National Marine Sanctuaries Act, and the National Environmental Policy Act of 1969.

“(C) Amounts may be appropriated to carry out this paragraph under the authority provided in section 313 of the National Marine Sanctuaries Act.”; and

(3) by amending subsection (c) to read as follows:

“(c) EFFECT OF OBJECTION BY GOVERNOR.—(1)(A) If, within 45 days after the date of issuance of the comprehensive management plan and implementing regulations under section 2306, the Governor of Hawaii certifies to the Secretary that the management plan, the implementing regulations, or any term of the plan or regulations is unacceptable, the management plan, regulation, or term, respectively, shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

“(B) If the Secretary considers that an action under subparagraph (A) will affect the Sanctuary in such a manner that the policy or purposes of this title cannot be fulfilled, the Secretary may terminate the designation under subsection (a). At least 30 days before that termination, the Secretary shall submit written notice of the termination to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

“(2)(A) If, within 45 days after the Secretary issues the documents required under subsection (b)(2)(B)(ii), the Governor of Hawaii certifies to the Secretary that the inclusion of the Kahoolawe Island waters in the Sanctuary or any term of that inclusion is unacceptable—

“(i) the inclusion or the term shall not take effect; and

“(ii) subsection (b)(2) shall not apply during the 3-year period beginning on the date of that certification.

“(B) If the Secretary considers that an action under subparagraph (A) regarding a term of the inclusion of the Kahoolawe Island waters will affect the inclusion or the administration of the Kahoolawe Island waters as part of the Sanctuary in such a manner that the policy or purposes of this title cannot be fulfilled, the Secretary may terminate that inclusion.

“(3) Amounts may be appropriated to carry out this subsection under the authority provided in section 313 of the National Marine Sanctuaries Act.”.

SEC. 8. FLOWER GARDEN BANKS BOUNDARY MODIFICATION.

(a) MODIFICATION.—Notwithstanding section 304 of the National Marine Sanctuaries Act (16 U.S.C. 1434), the boundaries of the Flower Garden Banks National Marine Sanctuary, as designated by Public Law 102–251, are amended to include the area described in subsection (d), popularly known as Stetson Bank. This area shall be part of the Flower Garden Banks National Marine Sanctuary and shall be managed and regulated as though it had been designated by the Secretary of Commerce under the National Marine Sanctuaries Act.

(b) DEPICTION OF SANCTUARY BOUNDARIES.—The Secretary of Commerce shall—

(1) prepare a chart depicting the boundaries of the Flower Garden Banks National Marine Sanctuary, as modified by this section; and

(2) submit copies of this chart to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(c) APPLICATION OF REGULATIONS.—Regulations issued by the Secretary of Commerce to implement the designation of the Flower Garden Banks National Marine Sanctuary shall apply to the area described in subsection (d), unless modified by the Secretary. This subsection shall take effect 45 days after the date of enactment of this Act.

(d) AREA DESCRIBED.—

(1) IN GENERAL.—Except as provided in paragraph (2), the area referred to in subsections (a), (b), and (c) is the area that is—

(A) generally depicted on the Department of the Interior, Minerals Management Service map titled “Western Gulf of Mexico, Lease Sale 143, September 1993, Biologically Sensitive Areas, Map 3 of 3, Final”;

(B) labeled “Stetson” on the High Island Area South Addition diagram on that map; and

(C) within the 52 meter isobath.

(2) MINOR BOUNDARY ADJUSTMENTS.—The Secretary of Commerce may make minor adjustments to the boundaries of the area described in paragraph (1) as necessary to protect living coral resources or to simplify administration of the Flower Garden Banks National Marine Sanctuary and to establish precisely the geographic boundaries of Stetson Bank. The adjustments shall not significantly enlarge or otherwise alter the size of the area described in paragraph (1), and shall not result in the restriction of oil and gas activities otherwise permitted outside of the “no activity” zone designated for Stetson Bank as that zone is depicted on the Minerals Management Service map entitled “Final Notice of Sale 161, Western Gulf Mexico, Biological Stipulation Map Package”.

(e) PUBLICATION OF NOTICE.—

(1) IN GENERAL.—The Secretary of Commerce shall, as soon as practicable after the date of the enactment of this Act, publish in the Federal Register a notice describing—

(A) the boundaries of the Flower Garden Banks National Marine Sanctuary, as modified by this section, and

(B) any modification of regulations applicable to that Sanctuary that are necessary to implement that modification of the boundaries of the Sanctuary.

(2) TREATMENT AS NOTICE REQUIRED UNDER NATIONAL MARINE SANCTUARIES ACT.—A notice published under paragraph (1) shall be considered to be the notice required to be published under section 304(b)(1) of the National Marine Sanctuaries Act (16 U.S.C. 1434(b)(1)).

(f) AUTHORIZATION OF APPROPRIATIONS.—Amounts may be appropriated to carry out this section under the authority provided in section 313 of the National Marine Sanctuaries Act, as amended by this Act.

SEC. 9. NORTHWEST STRAITS.

(a) SUBMISSION OF DOCUMENTS.—In the case of a Sanctuary in the Northwest Straits of the State of Washington, on the same day the notice required by section 304(a)(1)(A) of the National Marine Sanctuaries Act is issued, the Secretary of Commerce shall submit the documents required by section 304(a)(1)(C) of the National Marine Sanctuaries Act to the Advisory Committee established under subsection (b). The Advisory Committee shall then within 60 days review those documents and make recommendations to the Secretary regarding designation. Upon receipt of the recommendations of the Advisory Committee, the Secretary shall submit the documents required by section 304(a)(1)(A) of the National Marine Sanctuaries Act along with recommendations of the Advisory Committee to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) NORTHWEST STRAITS MARINE RESOURCES PROTECTION ADVISORY COMMITTEE.—(1) There shall be established, within 120 days after the date of enactment of this subsection, the Northwest Straits Marine Resources Protection Advisory Committee, consisting of 11 members appointed by the Secretary, at least 8 of whom are appointed in accordance with paragraph (2) and at least 1 of whom is appointed from each of the following counties in western Washington: San Juan, Island, Whatcom, Skagit, Snohomish, and Clallam. This Advisory Committee shall be exempt from the Federal Advisory Committee Act.

(2) The Secretary of Commerce shall appoint members of the Advisory Committee from a list of individuals submitted by each county specified in paragraph (1), in accordance with the following requirements:

(A) A county may not submit the names of individuals to the Secretary for appointment unless the county has determined that each individual, by reason of his or her occupational or other experience, scientific expertise, or training, is knowledgeable regarding the conservation and management, or the commercial or recreational harvest or use, of the marine resources of Puget Sound.

(B) Each list shall include the names and pertinent biographical data of not less than 3 individuals for each applicable vacancy and shall be accompanied by a statement by the county explaining how each individual meets the requirements under paragraph (1).

(C) The Secretary shall review each list submitted by a county to ascertain if the individuals on the list are qualified for the vacancy on the basis of the requirements under subparagraph (A). If the Secretary determines that no individual on a county's list is qualified, the Secretary shall notify the county of that determination. The county shall then submit a revised list or resubmit the

original list with an additional explanation of the qualifications of the individuals in question.

(c) **ADVISORY COMMITTEE REPORT.**—Within 1 year of the enactment of this Act, the Advisory Committee shall report to the Secretary of Commerce on the adequacy of existing marine resources protection under local, State, and Federal laws in the waters adjacent to the counties specified in subsection (b)(1). This report shall recommend whether a special resources management area is necessary to protect the marine resources in those waters. If the Advisory Committee recommends that a special resources management area is necessary, then the report shall specify whether that area should constitute a non-Federal management area, a National Marine Sanctuary, or some other form.

(d) **SUBMISSION OF NORTHWEST STRAITS DRAFT ENVIRONMENTAL IMPACT STATEMENT.**—The Secretary of Commerce shall not issue a draft Environmental Impact Statement under the National Environmental Policy Act of 1969 on a Northwest Straits National Marine Sanctuary until receipt of this report. If the Secretary issues a draft Environmental Impact Statement, it shall include the Advisory Committee's recommendation as an alternative.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—None of the funds authorized to be appropriated under this Act may be used to designate a National Marine Sanctuary in the Northwest Straits except in accordance with this section.

PURPOSE OF THE BILL

The purposes of H.R. 3487 are to reauthorize the National Marine Sanctuaries Act of 1972 through Fiscal Year (FY) 1999 and to make certain improvements to the management of the National Marine Sanctuary Program (NMSP).

BACKGROUND AND NEED FOR LEGISLATION

The National Marine Sanctuaries Act of 1972 (NMSA) authorizes the Secretary of Commerce to designate areas of the marine environment with nationally significant aesthetic, ecological, historical or recreational values as National Marine Sanctuaries. The primary objective of this law is to protect marine resources, such as coral reefs, sunken historical vessels or unique habitats, while facilitating all compatible public and private uses of those resources. In short, marine sanctuaries are our Nation's underwater parks. Sanctuaries are operated according to management plans, prepared by the National Oceanic and Atmospheric Administration (NOAA) on a site-by-site basis. NOAA administers the NMSP through the Office of Ocean and Coastal Resource Management.

To date, 14 National Marine Sanctuaries have been designated and are in various stages of implementation. Six of the 14 sanctuaries have been designated since 1990. Two of these, the Florida Keys (Florida) and Hawaiian Islands Humpback Whale (Hawaii) Sanctuaries, are still developing their final management plans. Two additional areas, Thunder Bay (Michigan) and Northwest Straits (Washington), are active candidates for designation. A table of National Marine Sanctuaries follows.

Site name and location	Size (Sq. Nautical Miles)	Designation date
Monitor NMS, NC	1	January 1975.
Channel Islands NMS, CA	1,252	September 1980.
Gray's Reef NMS, CA	17	January 1981.
Gulf of the Farallones NMS, CA	948	January 1981.
Fagatele Bay NMS, AS	0.28	April 1986.
Cordell Bank NMS, CA	397	May 1989.
Key Largo NMS (incorporated 1990), FL	100	December 1975.
Looe Key NMS (incorporated 1990), FL	5	January 1981.

Site name and location	Size (Sq. Nautical Miles)	Designation date
Florida Keys NMS, FL	2,600	November 1990. ¹
Flower Garden Banks NMS, TX	42	January 1992. ¹
Monterey Bay NMS, CA	4,024	September 1992. ¹
Stellwagen Bank NMS, MA	638	November 1992. ¹
Hawaiian Islands Humpback Whale NMS, HI	1,300–2,100 (TBA)	November 1992. ¹
Olympic Coast NMS, WA	2,500	July 1994.
Thunder Bay NMS, MI	TBD	TBD.
Northwest Straits NMS, WA	TBD	TBD.

¹ Statutory designation.

Congress enacted the NMSA in the midst of rising public concern over the increased dumping of various waste materials into our coastal waters. Amendments to the NMSA were enacted in 1980, 1984, 1988 and 1992. The 1980 amendments (Public Law 96–332) gave Congress authority to review a sanctuary designation before it becomes final. In the case of a sanctuary which is located partially or wholly within the seaward boundary of any State, the Governor of that State was given the authority to block the inclusion of State waters in the sanctuary or the application of any of the sanctuary terms to State waters.

The 1984 amendments (Public Law 98–498) changed the procedures by which sanctuaries were selected and designated, requiring the consideration of a site's educational, historical and research values, wider consultation, environmental studies and studies of compatible multiple use. The 1988 amendments (Public Law 100–627) contained provisions requiring compensation for the destruction or loss of, or injury to, sanctuary resources. Of specific interest was the inclusion of vessel liability provisions, which could be applied to groundings or other actions that damage marine sanctuary resources.

In November 1990, the Florida Keys National Marine Sanctuary was legislatively designated by the Florida Keys National Marine Sanctuary and Protection Act (Public Law 101–605). This represented the first designation of a sanctuary by Congress. Subsequently, Congress has designated the Flower Gardens Banks, Monterey Bay, Stellwagen Bank and Hawaiian Islands Humpback Whale National Marine Sanctuaries.

The 1992 NMSA amendments (Public Law 102–587) made subject to regulation certain activities that occur near or adjacent to a sanctuary that may harm or destroy protected values within it. Furthermore, the 1992 amendments required that Federal agencies conducting activities likely to affect sanctuary resources consult with the Secretary of Commerce; prohibited offshore oil and gas leasing within the Monterey Bay National Marine Sanctuary (California); streamlined the sanctuary designation process; designated three new sanctuaries; provided for better coordination between NOAA, the Environmental Protection Agency and other interested parties in protecting and restoring water quality in the Florida Keys National Marine Sanctuary; broadened the designation criteria; and authorized Federal funding at \$8.0 million for FY 1993; \$12.5 million for FY 1994; \$15.0 million for FY 1995; and \$20.0 million for FY 1996. Actual appropriations for the Program during that period were \$7.0 million for FY 1993; \$9.0 million for FY 1994; \$12.0 million for FY 1995; and \$11.685 million for FY 1996.

COMMITTEE ACTION

H.R. 3487 was introduced on May 16, 1996, by Congressman Jim Saxton (R-NJ), the Chairman of the Subcommittee on Fisheries, Wildlife and Oceans, and Congressman Sam Farr (D-CA). The bill was referred to the Committee on Resources and within the Committee to the Subcommittee on Fisheries, Wildlife and Oceans.

On March 21, 1996, the Subcommittee on Fisheries, Wildlife and Oceans of the Resources Committee conducted an oversight hearing on the implementation of the National Marine Sanctuaries Act. Testimony was heard from the Honorable Peter Deutsch (R-FL); Mr. Jeffrey Benoit, Director, Office of Ocean and Coastal Resource Management, NOAA; Dr. Michael P. Hirshfield, Director, Ecosystem Protection Program, Center for Marine Conservation; Ms. Michele Wells-Usher, Secretary, the Conch Coalition; Mr. John Sanchez, Executive Director, Monroe County Commercial Fishermen; Mr. J. Allison DeFoor II, Florida Keys National Marine Sanctuary Advisory Committee; Dr. Thomas LaHue, Monterey Bay National Marine Sanctuary Advisory Committee; and Mr. Brian Calvert, Port Commissioner, Friday Harbor, Washington. In his statement, Mr. Benoit noted that "sanctuaries accommodate multiple uses that encourage recreational use and foster economic growth and success. Protection of the marine environment also means we are protecting local economies."

On May 30, 1996, the Subcommittee met to mark up H.R. 3487. At that time, Chairman Saxton offered an amendment in the nature of a substitute, which authorized funding for the NMSP through FY 1999, directed the Secretary of Commerce to prepare and submit to the appropriate Congressional committees a long-range plan for the management, recovery, and preservation of the U.S.S. *Monitor*, eliminated the requirement for publishing notices of advisory council meetings regarding any individual national marine sanctuary in the Federal Register, and extended the authority of the Secretary to designate sponsors for the NMSP and to create, market and sell symbols and products to promote the NMSP. Congressman Jack Metcalf (R-WA) offered and withdrew an amendment to the Saxton amendment affecting the designation of the Northwest Straits National Marine Sanctuary. The Saxton amendment was adopted by voice vote. The bill, as amended, was then approved by voice vote and ordered favorably reported to the Full Committee.

On July 17, 1996, the Full Resources Committee met to consider H.R. 3487. Congressman Jack Metcalf again offered his amendment that would require majority approval by the six adjacent counties in the State of Washington prior to designation of the Northwest Straits National Marine Sanctuary. Congressmen Saxton and Farr then offered a substitute amendment to the Metcalf amendment. The Saxton-Farr substitute creates a Northwest Straits Marine Resources Protection Advisory Committee, identifies those who are eligible to serve on that committee and requires a report from the advisory committee recommending whether these State coastal waters should be incorporated within a National Marine Sanctuary or within some other designation. The Saxton-Farr substitute amendment to the Metcalf amendment was

adopted by voice vote, and the Metcalf amendment, as amended, was adopted by voice vote.

Congressman Neil Abercrombie (D-HI) offered an amendment to simplify the designation process for the addition of Kaho'olawe Island to the Hawaiian Islands Humpback Whale National Marine Sanctuary. Kaho'olawe Island is a former Naval bombing range and was not included in the Hawaii Sanctuary due to the potential hazards of unexploded ordnance. Under the designating legislation for the Hawaii Sanctuary, the Secretary of commerce is required to make an annual finding concerning the suitability of Kaho'olawe Island in the Sanctuary. The proposed change would eliminate this annual reporting requirement and would authorize the Kaho'olawe Island Reserve Commission to recommend designation to the Secretary at the appropriate time. This amendment was adopted unanimous consent.

Congressman Solomon P. Ortiz (D-TX) offered an amendment to add the area known as Stetson Bank to the Flower Garden Banks National Marine Sanctuary off the coast of Texas. Stetson Bank is a small coral-covered bank approximately 0.75 square miles in area. Declared a "no activity zone" under Minerals Management Service regulations, the exploration, development or production of oil, natural gas, or other minerals are currently prohibited in the area. Sanctuary designation would offer the area additional protection. The Committee intends that the designation of Stetson Bank as part of the Flower Garden Banks National Marine Sanctuary should not be construed as setting a precedent regarding the suitability of other areas in the Gulf of Mexico or elsewhere for sanctuary status. This Amendment was adopted by unanimous consent.

The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote in the presence of quorum.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This Act may be cited as the "National Marine Sanctuary Preservation Act."

Section 2. Amendment of the National Marine Sanctuaries Act

For the purposes of amendments or repeals, references in this Act are made to the National Marine Sanctuaries Act (16 U.S.C. 1431–1445a).

Section 3. Reauthorization of the National Marine Sanctuaries Act

Section 3 authorizes \$12 million for FY 1997, \$15 million for FY 1998, and \$18 million for FY 1999 for the purposes of carrying out this title.

Section 4. Management, recovery, and preservation plan for U.S.S. Monitor

Section 4 directs the Secretary of Commerce, within 12 months after the date of enactment of this Act, to prepare and submit to the Committee on Resources in the U.S. House of Representatives and the Committee on Commerce, Science and Transportation in the U.S. Senate a long-range plan for the management, stabiliza-

tion and recovery of artifacts and materials from the U.S.S. *Monitor*. Since 1992, annual NOAA research expeditions have noted that the wreck's condition has deteriorated significantly as a result of both natural and human causes. Both NOAA and private researchers agree that a long-range plan is needed for managing the site and determining what recovery and or conservation efforts should be undertaken. The Committee intends that this study will include an updated, detailed assessment of the state of the *Monitor* wreckage; a review of all available historical, archaeological and engineering information; a discussion of all possible management options, including no action, in-place stabilization, selected recovery and complete recovery; a strategy for field stabilization and documentation, complete field and laboratory conservation and permanent curation of artifacts and materials; and proposals for any relevant cooperative agreements between the NOAA, the U.S. Navy Supervisor of Salvage, the Naval Research Center, the U.S. Coast Guard, the Mariner's Museum in Newport News, Virginia, and/or other contributors from the archaeological community.

Section 5. Publication of notice of certain advisory council meetings

Section 5 eliminates the requirement for publishing notices of Sanctuary Advisory Council meetings regarding any individual national marine sanctuary, in the Federal Register. This is an attempt to streamline the public notification process.

Section 6. Enhancing support for national marine sanctuaries

Section 6 authorizes the Secretary to develop, market and sell symbols and products related to specific sanctuaries or the NMSP and to designate individuals as sponsors of specific sanctuaries or the NMSP.

Section 7. Hawaiian Islands National Marine Sanctuary

Section 7 simplifies the designation process for the addition of Kaho'olawe Island to the Hawaiian Islands Humpback Whale National Marine Sanctuary by eliminating the requirement for annual certifications of the island's suitability for inclusion; authorizing the Kaho'olawe Island Reserve Commission to submit to the Secretary a formal request for the inclusion of Kaho'olawe Island in the Hawaii Sanctuary; requiring the Secretary to determine the suitability on the basis of that submission, provide notice of that determination to the Governor of Hawaii, and prepare a supplemental environmental impact statement, management plan and implementing regulations for the included area; giving the Governor of Hawaii a 45-day period to accept or reject the terms of the inclusion; and giving the Secretary final authority to accept or terminate the inclusion.

Section 8. Flower Garden Banks boundary modification

Section 8 amends the boundaries of the Flower Garden Banks National Marine Sanctuary in the Gulf of Mexico to include an area known as Stetson Bank. A map of the area appears on the following page. The Committee does not intend the designation of Stetson Bank as part of the Flower Garden Banks National Marine Sanctuary to imply that any other particular area in the Gulf of

Mexico or elsewhere is suitable for inclusion in a national marine sanctuary.

Section 9. Northwest Straits

Section 9 creates the Northwest Straits Marine Resources Protection Advisory Committee, made up of 11 citizens, with at least 1 representative from each of six counties in western Washington which border on the proposed Northwest Straits National Marine Sanctuary; directs the advisory committee to submit recommendations to the Secretary of Commerce declaring whether a marine sanctuary or other form of protected area is needed for the Northwest Straits; requires that if the Secretary issues a draft environmental impact statement for the Northwest Straits Sanctuary, it must include the recommendation of the advisory committee as an alternative; and allows the advisory committee to review and comment on all necessary documents required for Sanctuary designation. The Committee intends that public officials who deal with conservation or resource management legislation and regulations meet the requirements for occupational experience as established in subsection (b)(2)(A). In the final stages of preparing the Saxton-Farr amendment, language which would have also required Congressional designation of a sanctuary in the Northwest Straits was inadvertently omitted from Section 9. The Committee intends to include this provision in a Committee amendment to H.R. 3487 when the bill is considered on the House Floor.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 3487 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 3487. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 3487 does not contain any new credit authority, or an increase or decrease in tax expenditures.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 3487.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3487 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 1996.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3487, the National Marine Sanctuaries Preservation Act.

Enacting H.R. 3487 could affect both direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3487.
2. Bill title: National Marine Sanctuaries Preservation Act.
3. Bill status: As ordered reported by the House Committee on Resources on July 17, 1996.
4. Bill purpose: H.R. 3487 would amend the National Marine Sanctuaries Act, which provides authority to the Secretary of Commerce (the Secretary) to designate certain marine environments as sanctuaries and to manage these environments in a way that protects marine resources while also facilitating compatible public and private uses. Specific provisions in the bill would:
 - Authorize appropriations for the national marine sanctuaries program (NMSP) for fiscal years 1997 through 1999;
 - Authorize the Secretary to include or consider including new areas in the NMSP;
 - Direct the Secretary to prepare a plan for preserving and recovering artifacts and materials from the U.S.S. *Monitor*; and
 - Authorize the Secretary to solicit and designate sponsors for the NMSP and to create, market, and sell symbols and products to promote the program. Fees collected from this authority would be available for spending without appropriation.
5. Estimated cost to the Federal Government: Assuming the appropriation of the authorized amounts, CBO estimates that enacting H.R. 3487 would result in new discretionary spending totaling

\$45 million over the 1997–2002 period. Enacting the bill also would affect direct spending but CBO estimates that there would be no net impact on direct spending in any year. The following table summarizes the budgetary effects of this bill.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION							
Spending under current law:							
Budget authority	12						
Estimated outlays	7	3	1	1			
Proposed changes:							
Authorization level		12	15	18			
Estimated outlays		7	12	15	7	3	1
Spending under H.R. 3487:							
Authorization level ¹	12	12	15	18			
Estimated outlays	7	10	13	16	7	3	1

¹ The 1996 level is the amount appropriated for that year.

The costs of this bill fall within budget function 300.

6. Basis of estimate: For the purpose of this estimate, CBO assumes that all amounts authorized would be appropriated for each year and that outlays would follow historical patterns for the NMSP. We also assume that the authorization levels contained in the bill encompass the costs of including or studying the inclusion of new areas within the program and of developing a recovery plan for the U.S.S. *Monitor*.

CBO estimates that enacting H.R. 3487 would have no significant impact on direct spending or revenues. The bill would provide the Secretary with permanent authority to solicit and designate sponsors for the NMSP, to create, market, and sell symbols and products to promote the program, and to collect penalties from individuals who use the NMSP symbol without permission. CBO estimates that collections from NMSP promotions would not exceed \$500,000 a year over the 1997–2002 period and that any amounts would be spent in the year they are collected. Based on information from the Department of Commerce, CBO estimates that any receipts from future penalties would be negligible. These estimates are based in part on the results of a two-year pilot program, which expired in fiscal year 1995, that yielded total collections of less than \$1,000 from NMSP promotions and no proceeds from penalties.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Enacting H.R. 3487 would affect direct spending, and could affect receipts. Therefore, pay-as-you-go procedures would apply to the bill. CBO estimates, however, that any effect on direct spending or receipts would be negligible for each year. The estimated pay-as-you-go impact of the bill is shown in the following table.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	0	0	0

8. Estimated impact on State, local, and tribal governments: H.R. 3487 contains no intergovernmental mandates as defined by Public Law 104-4, and would impose no costs on State, local, or tribal governments. According to Commerce Department officials, about 30 percent of the funds appropriated for the NMSP program is provided to states and local governments through grants, contracts, cooperative agreements, and in-kind contributions. Assuming appropriation of authorized amounts, States and local governments would receive about \$13.5 million over fiscal years 1997 through 1999 to help manage national marine sanctuaries.

9. Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in Public Law 104-4.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal cost estimate: Gary Brown; impact on State, local, and tribal governments: Pepper Santalucia; impact on the private sector: Amy Downs.

12. Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 3487 contains no unfunded mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

NATIONAL MARINE SANCTUARIES ACT

* * * * *

[SEC. 313. AUTHORIZATION OF APPROPRIATIONS.]

There are authorized to be appropriated to the Secretary to carry out this title the following—

- [(1) \$8,000,000 for fiscal year 1993;
- [(2) \$12,500,000 for fiscal year 1994;
- [(3) \$15,000,000 for fiscal year 1995; and
- [(4) \$20,000,000 for fiscal year 1996.]]

SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this title—

- (1) \$12,000,000 for fiscal year 1997;*
- (2) \$15,000,000 for fiscal year 1998; and*
- (3) \$18,000,000 for fiscal year 1999.*

* * * * *

SEC. 315. ADVISORY COUNCILS.

(a) * * *

* * * * *

(e) **PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.**—The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:

(1) * * *

* * * * *

(3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, *except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register.*

* * * * *

SEC. 316. ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES.

(a) **AUTHORITY.**—*The Secretary may establish a program consisting of—*

(1) *the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries;*

(2) *the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;*

(3) *the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;*

(4) *the authorization by the Secretary of the use of any symbol published under paragraph (1) by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;*

(5) *the creation, marketing, and selling of products to promote the national marine sanctuary program, and entering into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary's behalf;*

(6) *the solicitation and collection by the Secretary of monetary or in-kind contributions from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);*

(7) *the retention of any monetary or in-kind contributions collected under paragraphs (5) and (6) by the Secretary; and*

(8) *the expenditure and use of any monetary and in-kind contributions, without appropriation, by the Secretary to designate and manage national marine sanctuaries.*

Monetary and in-kind contributions raised through the sale, marketing, or use of symbols and products related to an individual national marine sanctuary shall be used to support that sanctuary.

(b) **CONTRACT AUTHORITY.**—*The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (a).*

(c) *RESTRICTIONS.*—*The Secretary may restrict the use of the symbols published under subsection (a), and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.*

(d) *PROPERTY OF UNITED STATES.*—*Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (a) is deemed to be the property of the United States.*

(e) *PROHIBITED ACTIVITIES.*—*It is unlawful for any person—*

(1) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;

(2) to represent himself or herself to be an official sponsor absent a designation by the Secretary;

(3) to manufacture, reproduce, or use any symbol adopted by the Secretary absent designation as an official sponsor and without payment of a monetary or in-kind contribution to the Secretary; and

(4) to violate any regulation promulgated by the Secretary under this section.

SEC. [316.] 317. SHORT TITLE.

This title may be cited as “The National Marine Sanctuaries Act”.

SECTION 2204 OF THE NATIONAL MARINE SANCTUARIES ACT

[SEC. 2204. ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES.

[(a) IN GENERAL.—Beginning on the date of enactment of this title, the Secretary shall conduct a 2-year pilot project to enhance funding for designation and management of national marine sanctuaries.

[(b) PROJECT.—The project shall consist of—

[(1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries;

[(2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

[(3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;

[(4) the authorization by the Secretary of the use of any symbol published under paragraph (1) by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

[(5) the establishment and collection by the Secretary of fees from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);

[(6) the retention of any fees assessed under paragraph (5) by the Secretary in an interest-bearing revolving fund; and

[(7) the expenditure of any fees and any interest in the fund established under paragraph (6), without appropriation, by the Secretary to designate and manage national marine sanctuaries.

[(c) CONTRACT AUTHORITY.—The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (b).

[(d) RESTRICTIONS.—The Secretary may restrict the use of the symbols published under subsection (b), and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.

[(e) PROPERTY OF UNITED STATES.—Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (b) is deemed to be the property of the United States.

[(f) PROHIBITED ACTIVITIES.—(1) It is unlawful for any person—

[(A) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;

[(B) to represent himself or herself to be an official sponsor absent a designation by the Secretary;

[(C) to manufacture, reproduce, or use any symbol adopted by the Secretary absent designation as an official sponsor and without payment of a fee to the Secretary; and

[(D) to violate any regulation promulgated by the Secretary under this section.

[(2) Violation of this subsection shall be considered a violation of title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

[(g) REPORT.—No later than 30 months after the date of enactment of this Act, the Secretary shall submit a report on the pilot project to Congress regarding the success of the program in providing additional funds for management and operation of national marine sanctuaries.

[(h) DEFINITIONS.—In this section—

[(1) the term “national marine sanctuary” or “national marine sanctuaries” means a national marine sanctuary or sanctuaries designated under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.), or by other law in accordance with title III of the Marine Protection, Research, and Sanctuaries Act of 1972;

[(2) the term “official sponsor” means any person designated by the Secretary who is authorized to manufacture, reproduce, or use any symbol created, adopted, and published in the Federal Register under this section for a fee paid to the Secretary; and

[(3) the term “Secretary” means the Secretary of Commerce.]

SECTION 2305 OF THE HAWAIIAN ISLANDS NATIONAL MARINE SANCTUARY ACT

SEC. 2305. DESIGNATION OF SANCTUARY.

[(A)] (a) DESIGNATION.—Subject to subsection (c), [the area described in subsection (b) is] *the area described in subsection (b)(1) and any area included under subsection (b)(2) are* designated as the Hawaiian Islands Humpback Whale National Marine Sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1451 et seq.), as amended by this title.

(b) AREA INCLUDED.—(1) Subject to subsections (c) and (d), the area referred to in subsection (a) consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward of the upper reaches of the wash of the waves on shore—

(A) * * *

* * * * *

[(2)(A)] On January 1, 1996, the area of the marine environment within 3 nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island is designated a part of the Sanctuary, unless during the 3-month period immediately preceding January 1, 1996, the Secretary certifies in writing to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives that the area is not suitable for inclusion in the Sanctuary. If such certification is made, it shall be accompanied by a written explanation of the Secretary's reasoning in support of the certification.

[(B)] After a certification of unsuitability is made under subparagraph (A), the Secretary shall annually make a finding concerning the suitability of the area for inclusion in the Sanctuary and submit to such congressional committees a report on that finding and the reasons thereof. If the Secretary finds that the area is suitable for inclusion in the Sanctuary, the area is designated a part of the Sanctuary on the 30th day after such report is submitted.

[(C)] Upon designation of the area under subparagraph (A) or (B), the area shall be managed as if it has been designated under section 2305, and the Secretary shall—

[(i)] publish a notice in the Federal Register announcing the designation and identifying the area; and

[(ii)] issue such regulations for the area as are necessary to fulfill the Secretary's responsibilities under this subtitle and title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).]

(2)(A) *Within 6 months after the date of receipt of a request in writing from the Kahoolawe Island Reserve Commission for inclusion within the Sanctuary of the area of the marine environment within 3 nautical miles of the mean high tide line of Kahoolawe Island (in this section referred to as the "Kahoolawe Island waters"), the Secretary shall determine whether those waters may be suitable for inclusion in the Sanctuary.*

(B) *If the Secretary determines under subparagraph (A) that the Kahoolawe Island waters may be suitable for inclusion within the Sanctuary—*

(i) the Secretary shall provide notice of that determination to the Governor of Hawaii; and

(ii) the Secretary shall prepare a supplemental environmental impact statement, management plan, and implementing regulations for that inclusion in accordance with this Act, the National Marine Sanctuaries Act, and the National Environmental Policy Act of 1969.

(C) Amounts may be appropriated to carry out this paragraph under the authority provided in section 313 of the National Marine Sanctuaries Act.

* * * * *

[(c) EFFECT OF OBJECTION BY GOVERNOR.—(1) If within 45 days after the date of the enactment of this title the Governor of Hawaii certifies to the Secretary that the designation (including the prospective additional designation under subsection (b)(2) of the area within 3 nautical miles of Kahoolawe Island) is unacceptable, the designation shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

[(2) If within 45 days after the date of issuance of the comprehensive management plan and implementing regulations under section 2306 the Governor of Hawaii certifies to the Secretary that the management plan, any implementing regulation, or any term of the plan or regulations is unacceptable, the management plan, regulation, or term, respectively, shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

[(3) If the Secretary considers that an action taken under paragraph (1) or (2) will affect the Sanctuary in a manner that the goals and objectives of this subtitle cannot be fulfilled, the Secretary may terminate the entire designation under subsection (a). At least thirty days prior to such termination, the Secretary shall submit written notification of the proposed termination to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.]

(c) EFFECT OF OBJECTION BY GOVERNOR.—(1)(A) If, within 45 days after the date of issuance of the comprehensive management plan and implementing regulations under section 2306, the Governor of Hawaii certifies to the Secretary that the management plan, the implementing regulations, or any term of the plan or regulations is unacceptable, the management plan, regulation, or term, respectively, shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

(B) If the Secretary considers that an action under subparagraph (A) will affect the Sanctuary in such a manner that the policy or purposes of this title cannot be fulfilled, the Secretary may terminate the designation under subsection (a). At least 30 days before that termination, the Secretary shall submit written notice of the termination to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2)(A) If, within 45 days after the Secretary issues the documents required under subsection (b)(2)(B)(ii), the Governor of Hawaii certifies to the Secretary that the inclusion of the Kahoolawe Island

waters in the Sanctuary or any term of that inclusion is unacceptable—

(i) the inclusion or the term shall not take effect; and

(ii) subsection (b)(2) shall not apply during the 3-year period beginning on the date of that certification.

(B) If the Secretary considers that an action under subparagraph (A) regarding a term of the inclusion of the Kahoolawe Island waters will affect the inclusion or the administration of the Kahoolawe Island waters as part of the Sanctuary in such a manner that the policy or purposes of this title cannot be fulfilled, the Secretary may terminate that inclusion.

(3) Amounts may be appropriated to carry out this subsection under the authority provided in section 313 of the National Marine Sanctuaries Act.

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